

02.24.16 compare version to existing Rule 4.05.50

## ADMINISTRATIVE RULES AND PROCEDURES OF NMSU

Version 02.24.16

### Rule No. 4.05.50 - Faculty Grievance Review and Resolution

#### PART 1: Introduction and Overview

The following rules and procedures (collectively referred to as Rule 4.05.50) are adopted pursuant to the authority granted in Regents' Policy 4.00. The university provides eligible faculty members with a fair and expeditious process by which faculty members may seek redress for grievable issues and may seek resolution of disagreements/disputes arising in the workplace. The following protocols describe the manner in which faculty grievances will be received by a body elected by the Faculty at large known as the Faculty Grievance Review Board (FGRB); accepted or declined; mediated; and/or heard more formally by a faculty peer hearing panel made up of members of the FGRB which issues factual findings and recommendations, and the university's chief academic officer issuing a final decision. The university encourages the early resolution of disputes in the work place through informal discussion. For matters not resolved in the Pre-Grievance Resolution stage, this Rule provides structured mediation and grievance hearing procedures for resolution by peer and administrative review. Retaliation against any person attempting dispute resolution in accordance with this Rule or against those who may be called upon to participate in the resolution process is prohibited; such allegations will be independently investigated and if substantiated, will be grounds for employee discipline.

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#### PART 2: Definitions

A. "Day": Means Monday through Friday, excluding official university holidays and closures.

B. "Faculty": Any full- or part-time tenured, tenure track, or regular non-tenure track faculty member who alleges they have been personally affected by a decision, action, or inaction. Faculty employment status will be determined by Human Resource Services when requested by the FGRB Chair.

C. "Faculty Consultant": A faculty member who provides consultation support in the pre-grievance, informal, mediation, and hearing and appeal grievance steps.

D. "Faculty Grievance Review Board Chair" or "FGRB Chair": A member of the Faculty Grievance Review Board elected by the membership to serve as the contact person for the full FGRB, who will coordinate procedural matters and communicate on behalf of the FGRB. The chair shall administer this Rule, and communicate for the panel collectively, which may necessitate a vote of the full FGRB from time to time, if the matter is in debate.

E. "Grievance Record": The documentation in any format (e.g. e-mail) relating to the grievance, including but not limited to notifications setting the date, time, and location of the mediation session or formal hearing; written procedural guidance provided by the FGRB Chair, mediator or hearing panel to the parties, if any; all evidence submitted by the parties at the formal hearing, labeled as to which party submitted it; the recordings of the formal hearing, the findings of fact and recommendations, and the Executive Vice President and Provost's final decision. No materials from the mediation shall be part of the grievance record except for notices of meeting dates and the

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Deleted: into one Faculty Grievance Review Board and revising policy and procedures) passed 04.29.10; recommended by Administrative Council 06.08.10; approved by Board of Regents 07.20.10][Amendment FS Proposition 19-11/12A passed Faculty Senate 05.03.12; signed by the President 05.21.12; approved

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151 Mediation Agreement, if any.

152 F. "Grievant": Means any faculty member, or any group of faculty, alleging a grievable claim.

153 G. "Hearing Panel": Three members of the FGRB, designated by it to conduct the formal hearing, if the matter is not  
 154 resolved in mediation.

155 H. "Hearing Panel Chair": A member of the three member hearing panel, designated amongst the three panel  
 156 members, to serve as the lead in conducting the administrative hearing for the grievance matter. The hearing  
 157 panel chair conducts the hearing fairly and impartially, consistent with [this Rule](#), and communicates for the panel  
 158 collectively, which may necessitate a vote of the panel from time to time, if matters are in debate.

159 I. "Mediator": [The person\(s\)](#) designated by the [FGRB](#) to explore pre-hearing dispute resolution.

160 J. "NMSU Entity": A general term which is used to refer to an NMSU administrative unit, including, but not limited  
 161 to, departments, colleges, schools, extension service, and experiment stations. The [NMSU Las Cruces campus](#)  
 162 library is considered a single NMSU entity for purposes of this [Rule](#). Private corporations or other entity affiliated  
 163 with NMSU for fundraising, research, public service, or other purposes are not "NMSU entities".

164 K. "Party": The individual(s) who filed the grievance and any person or entity named or joined as a respondent.

165 L. "Respondent": Any person or entity whose action or inaction gave rise to the grievance.

166 **PART 3: Recognition and Authority of the Faculty Grievance Review Board.**

167 A. Grievances Within the FGRB's Jurisdiction: The jurisdiction of the Faculty Grievance Review Board (FGRB)  
 168 shall include faculty grievances of all types, except for issues subject to an appeal or review process covered in  
 169 another policy or rule, and except for the following non-grievable issues:

170 1. Job direction, including coaching, counseling, and documented warnings provided for purpose of  
 171 improving work performance;

172 2. Non-renewal of annual employment contract during probationary period of a tenure-track faculty member,  
 173 unless a violation of policy, rule, or procedure, or the letter of hire, is alleged;

174 3. The merits of promotion and tenure final decisions, except for alleged violation(s) of policy, rule, or  
 175 procedure. (See [Policy 5.90 - Promotion and Tenure](#));

176 4. Disputed matters that fall within the jurisdiction of another NMSU entity or hearing body, including but not  
 177 limited to, involuntary termination for cause (See [Policy 5.47 Faculty Discipline and Appeal Processes](#)),  
 178 complaints of unlawful discrimination (See [Policy 3.25 Discrimination, Harassment and Sexual](#)  
 179 Misconduct on Campus), and intellectual property disputes (See [Policy 5.94.20 Research](#));

180 5. Reassignment or transfer, provided no change in tenure home (See [Policy 5.90.2](#)), loss in pay or faculty  
 181 rank, or other violation of policy, rule, or procedure, or letter of hire is alleged;

182 6. Changes in status of an academic administration position, consistent with policy (See [Policy 5.92](#)  
 183 [Reassignment of Administrators/Department Heads](#)), rule or procedure, and letters of hire;

184 7. The substance of a policy, rule or procedure, including established practices, unless it has an alleged unfair  
 185 impact;

186 8. A resignation that has been sent and received;

187 9. Issues that could have been raised in a previous grievance submitted to the FGRB involving the same  
 188 parties and arising from the same or substantially similar facts. This exclusion is intended to bar  
 189 duplicative claims or claims that could have been included in the prior grievance; and

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411 10. Grievances filed past the time limits as specified in this Rule without a waiver from the appropriate NMSU  
412 official.

413 B. Authority: The FGRB, assigned mediators, or hearing panel members, as appropriate, are authorized to;

414 1. Elect a chair and vice chair from its membership. The chair will receive and send correspondence relating  
415 to procedural matters for pending grievances, and take the lead in setting meetings and coordinating with  
416 other officials and offices as necessary for the FGRB to administer this Rule. The vice chair will act in the  
417 chair's absence;

418 2. Decide whether or not matters brought before it are within its jurisdiction (See PART 5 A. above), and  
419 including determination of eligibility of faculty member (See PART 4 B.) and whether the grievance was  
420 submitted in a timely manner (See Part 8. A.) and in proper form (See Part 8 B.);

421 3. Ascertain the best approach for processing the grievance, including, but not limited to, selection of an  
422 appropriate mediator and hearing panel;

423 4. Conduct fact finding hearings and to issue recommendations to the Executive Vice President and Provost;

424 5. Recommend revisions to Rule 4.05.50; and

425 6. Require the parties' attendance and cooperation in all faculty grievance matters, including the parties'  
426 supervisor's cooperation, as needed.

427 C. Administrative Support: The Faculty Senate Chair, or their designee, and the Assistant Vice President of Human  
428 Resource Services shall coordinate to provide the FGRB with the necessary clerical, administrative, and technical  
429 support it requires, which shall include guidance relating to applicable time deadlines and other procedural issues  
430 that may arise.

431 D. Composition of Faculty Grievance Review Board (FGRB): The FGRB shall consist of a total of 9 faculty  
432 members with 6 at-large members (4 tenured or tenure-track faculty and 2 college regular non-tenure track  
433 faculty) and 3 department heads.

434 1. Elections:

435 a. Elections will be held during the Fall semester with the term of service to begin the first day faculty  
436 report the following Spring semester. If for some reason service cannot start at that time, regardless of  
437 when it does start, the end date of service will not change.

438 b. Nominees for the at-large positions shall result from a general announcement calling for nominees,  
439 including self-nominations. The at-large members shall not be a department head, associate dean, or  
440 dean on interim or permanent basis. The faculty shall elect the at-large member(s) from the complete  
441 list of nominees.

442 c. After a general call throughout the NMSU system for nominations for the department head positions,  
443 the Executive Vice President and Provost will forward at least two nominations for each vacant position  
444 to the Faculty Senate who will elect the member.

445 d. Nominations will be made such that no Faculty Senate electing group (See Faculty Senate Constitution)  
446 shall have more than three members on the FGRB and no department will have more than one.

447 e. Elected members shall serve a three-year term and shall serve no more than two consecutive, 3-year  
448 elected terms.

449 f. Elected members shall attend orientation training within a month after beginning their FGRB service.

450 g. Elected members shall either have already received mediator training or agree to attend such training

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2. Continuance of Service: The members shall continue to serve on the FGRB until member's replacement has been elected, notwithstanding the limitation on service to two consecutive three-year terms.

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3. Vacancies Due to Resignation:

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a. A FGRB member may resign by providing written notice to the FGRB Chair copied to the Faculty Senate Chair.

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b. Any FGRB member who is unavailable for more than 12 weeks, including during the summer, shall be deemed resigned from the FGRB.

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c. Upon a vacancy created by an at-large FGRB member's resignation, the Faculty Senate Chair shall announce the vacancy system-wide and ask interested and qualified faculty to submit their names. The Faculty Senate Chair shall select from these names an individual to serve.

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d. Upon a vacancy created by a Department Head FGRB member's resignation, the Executive Vice President and Provost shall submit at least two nominees to the Faculty Senate Chair. The Faculty Senate Chair shall select from these names an individual to serve.

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e. The replacement member shall serve for the remainder of the elected member's term.

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f. Replacement member's service shall not be counted as part of the two-term limit.

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E. Meetings:

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1. For all meetings of the FGRB, a minimum of 24 hours e-mail or written notice will be given to all members of the FGRB.

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2. For actions taken by the FGRB, a minimum of a quorum of five is needed. To facilitate meetings of the FGRB, members may participate telephonically or by other electronic/digital means, provided that confidentiality is maintained.

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F. Training: Each FGRB member shall receive annual training relative to their FGRB duties and responsibilities. Additional training may be required. Any FGRB member who fails to attend mandatory training shall be deemed resigned from the FGRB, at the discretion of the FGRB Chair and with concurrence from the Faculty Senate Chair.

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**PART 4: General Procedures Applicable To Each Step of Grievance Process**

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A. Communications:

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Creation and Preservation of the Grievance Record:¶  
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Method of Communication: Communication

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1. There shall be no ex parte communication in any form (e.g. verbal, written, email, text, social media) between a party, including the party's representative or faculty consultant, and a mediator, hearing panel member, or other individual who may be involved in the grievance resolution.

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2. Communications between any party and any official with responsibility under this Rule should either be in writing or be promptly documented for the benefit of the other officials (e.g. members of the hearing panel or members of the FGRB) and parties.

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3. Under no circumstances shall the Chancellor and/or the Executive Vice President and Provost be copied with correspondence generated during the grievance proceeding, unless specifically required by this Rule.

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4. Official correspondence shall be sent by the FGRB Chair, mediator, or hearing panel chair, as appropriate, in a manner that maintains confidentiality and that facilitates confirmation of receipt.

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651 B. Right to Faculty Consultant: Either party may enlist the aid of a Faculty Consultant whose role shall be to provide  
652 guidance directly to the party and to attend the mediation or formal hearing. The role of Faculty Consultant does  
653 not include actively advocating in official communications, mediation sessions, or the formal hearing on behalf  
654 of the party. It is the responsibility of the party to keep the Faculty Consultant informed. If the party requests  
655 assistance in obtaining a Faculty Consultant, the Faculty Senate Chair or their designee shall appoint a senior  
656 faculty member to serve in that capacity.

657 C. Stay of Proceedings: With the concurrence of the Office of University General Counsel, a grievance may be  
658 stayed by the FGRB Chair when the grievant is also seeking relief based upon the same set of facts in another  
659 forum, or agrees to explore alternative dispute resolution outside the scope of this Rule. The matter may be re-  
660 opened, if appropriate, depending upon the outcome of the other proceeding. Any party may submit a written  
661 request to the FGRB Chair that a particular grievance be stayed.

662 D. Confidentiality: All personnel shall maintain and preserve confidentiality regarding faculty grievance matters.  
663 Resolution terms of any grievance will be only be divulged to personnel whose assistance is required in  
664 implementing the terms of the agreement.

665 E. Fair and Impartial Mediation and Hearing Process: All parties, including grievant and respondent, are entitled to  
666 a fair and impartial review of their claims. This includes the prompt resolution of actual or perceived conflicts of  
667 interest:

668 1. Conflicts Guidelines:

669 a. Under no circumstances will a FGRB mediator or hearing panel member participate in a hearing  
670 convened to hear a grievance involving a party with whom the member has a familial, personal, or close  
671 professional relationship. A FGRB member shall not mediate, nor hear, a matter involving faculty from  
672 their own academic department.

673 b. If one or more of the witnesses has a close relationship with one of the hearing panel members,  
674 disqualification of the hearing panel member from service shall not be automatic, but shall be decided  
675 based upon the specific facts of each case.

676 c. If the grievant, respondent, or a witness has had prior contact with either the assigned mediator or a  
677 hearing panel member, disqualification of the mediator or panel member from service shall not be  
678 automatic, but shall be decided based upon the specific facts of each case.

679 2. Early Disclosure of Conflict and Voluntary Recusal:

680 a. Any FGRB member selected to serve as either the mediator or as a member of the hearing panel in a  
681 grievance matter shall disclose actual or potential conflicts of interest immediately, or as soon as it is  
682 realized, in order that it may be resolved prior to the informal or formal grievance processes.

683 b. A party shall also raise the issue of an actual or potential conflict of interest relating to a mediator or  
684 FGRB hearing panel member as soon as the conflict is known.

685 c. After consideration of the relevant facts and positions of the parties, if it is determined that a conflict  
686 exists sufficient to call into question the impartiality of the FGRB member, the resolution will be either  
687 voluntary recusal by the individual alleged to have the conflict or by substitution of a different individual  
688 by the FGRB Chair.

689 3. Process to Resolve Alleged Conflict of Interest:

690 a. In the event a conflict of interest issue is raised and not resolved amicably by substitution of another  
691 individual, the FGRB Chair shall give notice of the potential conflict to the parties and proceed to resolve  
692 the issue as expeditiously as possible.

693 b. If a challenged mediator or hearing panel member agrees that the conflict is sufficient to render the

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(See Also Subsection G. 7.): At the conclusion of the faculty grievance, at whatever stage it might be resolved, the official grievance record as defined above in Section D. will be forwarded by the chair of the Faculty Grievance Review Board, with the assistance of the Office of HRS; there is no need to copy the Office of the EVP/Provost or any other office with the correspondence generated during the grievance proceeding.¶  
¶  
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834 member unable to participate in a fair and impartial manner, the individual shall be excused from further  
835 participation.

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836 c. If the challenged mediator or hearing panel member disagrees that there is a conflict sufficient to affect  
837 impartiality, the matter will be decided by the Faculty Senate Chair.

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838 i. Each party may provide their position on the issue, and comment on the position of the other party.  
839 Other evidence may be considered if relevant or needed to decide the issue; however, the parties are  
840 entitled to know and comment on any other evidence considered by the Faculty Senate Chair in  
841 making the decision.

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842 ii. If a mediator is excused based on a finding of conflict of interest, the FGRB Chair shall select a  
843 replacement.

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844 iii. If a hearing panel member is excused based on a finding of conflict of interest, the FGRB Chair  
845 shall select a replacement from the FGRB.

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846 F. Time Deadlines After a Grievance has been Accepted: Each step of the grievance process is intended to be  
847 conducted as expeditiously as possible. Requests for extensions of time may be made by any party or official  
848 involved in the process. All requests for time extensions, including basis for the request, shall be in writing and  
849 shall be copied to all parties and the FGRB Chair. The FGRB Chair, with the concurrence of the Faculty Senate  
850 Chair, will decide whether or not to grant requests for extensions of time.

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851 G. Filing and Storage of Grievance Record: At the conclusion of any stage of the grievance process, the officials with  
852 authority under this Rule shall forward documentation belonging in the grievance record to the FGRB Chair. If  
853 the matter is submitted to a formal hearing panel, once the panel has rendered its findings and recommendations,  
854 the hearing panel chair shall notify the FGRB and transmit the hearing record to the FGRB chair, who will compile  
855 the complete grievance record and forward to the office of the final decision maker. The final decision maker shall  
856 ensure that the Office of Human Resource Services, Employee and Labor Relations (HRS-ELR) receives the  
857 complete Grievance Record for storage and maintenance in accordance with the university's records retention  
858 policies, once the final decision has been issued to the parties.

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859 1. The grievance record shall not be filed in the official personnel file. The grievance record will be stored in  
860 a grievance file with the Office of Human Resource Services, Employee and Labor Relations. Occasionally,  
861 it may be appropriate to file or to cross-reference a grievance decision in the official personnel file (e.g. to  
862 justify a mandated change in salary).

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863 2. If the grievant prevails on an issue affecting a document contained in the official personnel file, that document  
864 will be revised and the original document will be moved to the grievance file, to document compliance with  
865 the decision on the grievance.

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866 3. Copies of the document reflecting the final administrative action to be taken as a result of a grievance, such  
867 as a Mediation Agreement or the Final Decision, shall be stored permanently in the Office of the Executive  
868 Vice President and Provost.

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869 H. Prohibition of Retaliation:

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870 1. Retaliation against any person or against any party involved in the grievance is strictly prohibited.

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871 2. Any claims of retaliation shall be reported immediately to the Assistant Vice President of Human Resource  
872 Services.

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873 3. Claims of retaliation shall be investigated independently of Rule 4.05.50 and, if substantiated, will be grounds  
874 for corrective or disciplinary action, appropriate to the situation.

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875 PART 5: Pre-Grievance Discussions (w/i 30 days from most recent action or inaction giving  
876 rise to the grievance)

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987 A. Good Faith Effort to Resolve by Pre-Grievance Communication: A potential grievant is strongly encouraged to  
988 attempt to seek resolution of the dispute as soon as possible, prior to escalation and polarization of positions, and  
989 also at the lowest administrative level possible. For this reason, time is built into the grievance process to allow  
990 the parties to make a good faith attempt to resolve the matter(s) in dispute.

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991 **PART 6: Procedures to Initiate a Grievance**

992 A. Filing of Formal Grievance: If the pre-grievance discussions are unsuccessful, the faculty member submits a  
993 written grievance within thirty (30) days from the date of the action or inaction giving rise to the grievance. The  
994 thirty (30) day deadline may be waived by the FGRB in cases alleging a “continuing violation” where the most  
995 recent incident alleged occurred within the thirty (30) day period, or where ongoing and genuine efforts during  
996 the pre-grievance stage caused a delay in filing, but should not extend past ninety (90) days from the most recent  
997 action or inaction.

998 **B. Grievance Format:**

999 1. The grievance shall be in memo format, with the subject line indicating that it is a faculty grievance and the  
1000 respondent(s) named therein (e.g. "SUBJECT: Faculty Grievance versus Respondents ABC and GHI").

1001 2. The grievance memo, limited to 5 pages excluding attachments, shall:

1002 a. Identify the grievant(s) by name, job title, phone number, mailing address, NMSU e-mail address and  
1003 the method by which they may be readily contacted;

1004 b. Identify the respondent(s) by name, job title, phone number, and e-mail address;

1005 c. Identify the issue(s) in dispute, including the specific allegations against each named respondent;

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1006 d. Identify any individuals with personal knowledge regarding the issues in dispute, including contact  
1007 information for the individual;

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1008 e. Identify efforts made to date to resolve dispute;

1009 f. Outline the points in support of the grievant's position, referencing any supporting documentation;

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Identify involved parties and provide email and physical address of the grievant to which official grievance correspondence should be sent.¶  
¶

1010 g. State the desired outcome of the grievance;

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1011 h. Include the statement “By signing this grievance, I hereby verify that the facts I have alleged in this  
1012 grievance are to the best of my knowledge and belief true and accurate.”;

1013 i. Contain the signature of the grievant with the date signed; and

1014 j. Attach or reference any supporting documentation;

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1015 C. Notice: The grievant shall electronically send a copy of the grievance to:

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1016 1. The FGRB Chair;

1017 2. If the FGRB accepts the grievance, it shall be the responsibility of the grievant to provide a copy of the  
1018 grievance to the respondent and any other parties as may appropriate (e.g. grievant's and respondent's  
1019 supervisors).

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State the remedy requested.¶  
¶  
Procedures to Determine

1020 **PART 7: Initial FGRB Meeting (15 day duration; 30 days if appealed)**

1021 A. Participation by FGRB Membership: For jurisdictional or other procedural issues, the FGRB may meet in person  
1022 or by electronic means, provided that all members are able to hear and to be heard during the meeting.

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1037 **B. Determination of Jurisdiction:**

1038 1. Within ten (10) days of receipt of the grievance, at least a quorum of the FGRB chair shall convene to review  
1039 the grievance and determine whether or not the faculty member has standing and has filed a timely claim that  
1040 is grievable under this Rule. The FGRB will either accept or reject the grievance.

1041 2. Typically, the FGRB Chair will issue official correspondence to the parties on behalf of the FGRB; however,  
1042 as agreed by the members, any member may issue the written determination to the parties on behalf of the  
1043 FGRB, provided it is reflective of what the majority of the FGRB members decided.

1044 3. The determination to accept or decline a grievance shall be issued in writing to all parties within five (5) days  
1045 from the date the FGRB met to determine whether or not to accept the grievance.

1046 **C. Right to Appeal from Determination Relating to the FGRB's Jurisdiction:**

1047 1. The FGRB determination may be appealed by either party in writing to the Assistant Vice President of Human  
1048 Resource Services. A copy of the appeal shall be sent to all parties and to the FGRB Chair.

1049 2. The appeal must be received by the Office of the Assistant Vice President of Human Resource Services  
1050 within five (5) days of the appellant's receipt of the determination from the FGRB.

1051 3. The appeal must be written, with a copy of the determination by the FGRB attached, and explain the basis  
1052 for the appeal.

1053 4. All parties shall be given an opportunity to respond in writing and provide their respective position relative  
1054 to the appeal. Any response shall be submitted to the Assistant Vice President of Human Resources Services  
1055 within five (5) days of the parties' receipt of the appeal.

1056 5. The Assistant Vice President of Human Resource Services may consult with the Executive Vice President  
1057 and Provost and shall issue a final written decision within five (5) days from the date that the Assistant Vice  
1058 President for Human Resource Services received the appeal.

1059 6. A copy of the decision shall be sent to all parties and to the FGRB Chair.

1060 7. The decision of the Assistant Vice President of Human Resource Services is not appealable.

1061 **D. Mediator Selection:**

1062 1. If the grievance is accepted, the FGRB shall select a mediator, or at their discretion co-mediators, at the  
1063 meeting at which the grievance is accepted.

1064 2. If a FGRB member serves as mediator, that person will also coordinate the mediation.

1065 3. In cases in which an external mediator is needed, the FGRB Chair will coordinate the selection with the  
1066 Assistant Vice President of Human Resource Services. When an external mediator is used, the FGRB Chair  
1067 will act as the mediation coordinator.

1068 **E. Option to Bypass Mediation: At the discretion of majority of a quorum of the FGRB, and in rare instances, the**  
1069 **mediation step may be bypassed, allowing the parties to proceed directly to a formal hearing.**

1070 **PART 8: Mediation (30 day duration, absent agreement from both parties to extend)**

1071 A. **Purpose:** The purpose of the mediation phase of the grievance procedure is to resolve the grievance and obviate  
1072 the need for the formal hearing and decision-making process. The mediation may involve multiple sessions at  
1073 the discretion of the mediator(s) and with the cooperation of the parties.

1074 **B. Confidentiality:**

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The Faculty Grievance Review Board member selected (See Section F. 8.) to coordinate the mediation phase of the grievance may serve as mediator, or, if warranted by the facts alleged or the parties involved, and with the approval from the Faculty Grievance Review Board chair, may utilize a mediator external to the Faculty Grievance Review Board to conduct the pre-hearing dispute resolution (mediation) phase of the grievance process.¶

¶  
The Faculty Grievance Review Board mediator may conduct the mediation jointly with an external mediator; may rely on external mediator(s) to conduct the mediation; and may require that more than one mediation session be held.¶

¶  
The Faculty Grievance Review Board member selected

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115 1. All documentation, information, positions asserted, admissions or concessions shared for purposes of  
116 exploring a mediated resolution shall remain confidential and shall not be divulged by any party or mediator  
117 to any person without a need to know, including other members of the FGRB, nor used against any party at  
118 any subsequent hearing or proceeding.

119 2. Every individual consulted regarding the potential for settlement shall be advised about the confidential  
120 nature of the communications.

121 3. The provisions relating to confidentiality continue to apply even after the conclusion of the mediation  
122 session(s).

123 C. Mediation Coordinator Responsibilities:

124 1. Arrange for the initial mediation to take place within ten (10) days of the appointment of the mediator.

125 2. Work with the FGRB Chair, the Office of Human Resource Services, and the Office of University General  
126 Counsel, as necessary, regarding the logistics of conducting the mediation sessions, especially with regard to  
127 compliance with applicable time deadlines.

128 D. Mediator(s) Responsibilities:

129 1. Provide the parties to the grievance written ground rules for the pre-hearing dispute resolution session(s)  
130 prior to or at the commencement of the first mediation session. The parties will be asked to read them and to  
131 sign, indicating their willingness to abide by them. If any party refuses, the mediation will be cancelled, and  
132 the grievance will be submitted to the FGRB hearing panel chair for a hearing and decision.

133 2. Meet with the parties and take other action as necessary to resolve all or part of the grievance. This may  
134 include review of documents, interviews or consultations with persons not on the FGRB, including but not  
135 limited to university officials whose authority to implement a proposed solution will be necessary, provided  
136 they will not be involved in the mediation and/or formal hearing processes.

137 3. Cancel the session and submit the matter to the formal hearing stage if, at any point during the mediation, a  
138 party's behavior is in violation of the ground rules and the behavior is counterproductive to the mediation.

139 4. If all or part of a grievance is resolved, draft during the mediation session a Mediation Agreement outlining  
140 the agreement, including the details relating to follow-up action(s) to be taken, and have it signed by all  
141 parties.

142 5. Work, if necessary, with HRS-ELR and Office of University General Counsel to obtain any needed  
143 administrative approvals to authorize the draft agreement.

144 6. No later than thirty (30) days from the mediator's receipt of the grievance, absent an extension of time, send  
145 a written request for formal hearing to the FGRB Chair, if not all issues being grieved are resolved through  
146 mediation.

147 7. Request an extension of time only if progress is being made and there remains a viable possibility of resolving  
148 the grievance in the mediation stage.

149 E. Mediation Outcomes: By way of a transmittal memo, the mediator shall inform the Assistant Vice President of  
150 the Office of Human Resource Services about the outcome of the mediation, and attach a copy of the mediation  
151 agreement, if any. The mediator shall also inform the FGRB Chair of the outcome(s) of the mediation session so  
152 the chair can forward the record to HRS if the mediation was successful or arrange for a formal hearing if some  
153 of the issues are unresolved. The possible outcomes of a mediation session include:

154 1. Complete Resolution: If mediation resolves all of the issues identified in the grievance, a signed Mediation  
155 Agreement (see E. 5. below) will be produced prior to the conclusion of the mediation session.

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The mediator(s) will provide

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If at any point during the mediation, a party's behavior is in violation of the ground rules, and the behavior is counterproductive to the mediation, the mediator has the authority to cancel the session and elect to submit the matter to the formal hearing stage.¶  
¶  
All documentation, information, positions asserted, admissions or concessions shared for purposes of exploring a pre-hearing dispute resolution shall remain confidential and shall not be divulged by any party or mediator to any person, including the other members of the Faculty Grievance Review Board, nor used against any party at any subsequent hearing or proceeding. With the exception of a Mediation Agreement, if any, the mediator will ask that the parties to leave written documentation behind which the mediator(s) ...

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258 2. Partial Resolution: For issue(s) resolved by the mediation, the resolution will be included in the Mediation  
259 Agreement (see E. 5. below). For issue(s) not resolved by mediation, the issue(s) remaining will be identified  
260 in the notification of the outcome (See item E. 5.) and submitted for formal hearing. Each party has the  
261 authority to decide whether or not to agree to a Mediation Agreement that resolves only part of a grievance.

262 3. No Resolution: If the mediation does not resolve any of the issues raised in the grievance, the issues  
263 remaining will be submitted for formal hearing by way of the mediator's notification of the outcome. See E.  
264 5. below.

265 4. Mediation Agreement: If some or all of the issues identified in the grievance are resolved through mediation,  
266 a Mediation Agreement will be written by the mediator and signed by all parties prior to the conclusion of  
267 the mediation session. The Mediation Agreement will document the issue(s) resolved through mediation and  
268 the agreed to conditions. All parties who have agreed to the resolution shall sign the Mediation Agreement.  
269 By signing the Mediation Agreement, the parties indicate that they are willing to be held accountable to the  
270 terms of the Mediation Agreement and, if necessary, that their supervisor(s) may be enlisted to enforce the  
271 agreement. The Mediation Agreement shall be filed with the grievance record; each party will be provided  
272 with a copy to facilitate its implementation. The parties shall agree to maintain it in a secure manner that  
273 will not jeopardize confidentiality.

274 5. Notification of Mediator Outcome: The mediator shall inform the Office of Human Resource Services of  
275 the outcome of the mediation including a copy of the mediation agreement, if any. The mediator shall also  
276 inform the FGRB Chair of the outcome(s) of the mediation session so the chair can forward the record to  
277 HRS if the mediation was successful or arrange for a formal hearing if some of the issues are unresolved.  
278

279 F. Documentation:

280 1. Mediation Agreement: The only documentation that shall be retained after mediation is a formal signed  
281 Mediation Agreement that documents that the parties reached a mutually satisfactory agreement.

282 2. Note Destruction: All written notes taken by any participant during the mediation session will be  
283 collected by the mediator at the conclusion of the mediation session. If not mediation agreement is  
284 reached or after a mediation agreement has been signed by all parties, these notes will be destroyed by  
285 the mediator.

286 **PART 9: Formal Hearing (45 day duration, absent time extension)**

287 A. Composition of Hearing Panel: Three members of the FGRB, consisting of two faculty members and one  
288 department head, shall constitute the hearing panel. Under no circumstances shall the mediator(s) serve on  
289 the hearing panel.

290 B. Hearing Panel Appointment: The hearing panel will be appointed by a majority of a quorum of the FGRB  
291 within ten (10) days of the mediator informing the FGRB Chair that the grievance was not resolved by way  
292 of mediation.

293 C. Hearing Panel Chair: The hearing panel shall select one of its members to chair the panel. The hearing panel  
294 chair shall:

295 1. Communicate with the parties and other personnel as appropriate on behalf of the panel.

296 2. Inform the parties that they must submit a position statement outlining the points in support of that  
297 party's position (with attached exhibits and a list of witnesses, if any) and that they must electronically  
298 distribute their position statements the other party and all members of the hearing panel. The position  
299 statements must be distributed within five (5) days of this notification.

300 3. Allow all participants at least five (5) days to review the position statements.

301 4. Set the hearing date to be five (5) to fifteen (15) days after the last of the position statements has been

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distributed and give all participants at least five (5) days, and more if possible, notice prior to the meeting.

5. Coordinate with HRS-ELR for logistic and administrative support.

D. Timeframe for Hearing: The hearing shall be conducted within twenty (20) days after the FGRB Chair notifies the hearing panel chair that the mediation left some issue(s) unresolved. The timeline below begins when the hearing panel chair has notified the parties that mediation did not completely resolve the grievance and that the grievance resolution process is advancing to the hearing phase.

1. Days 1-5: Each party develops and distributes their position statement. The position statement must outline the points in support of that party's position, with attached exhibits, and a list of witnesses, if any. Each party must electronically distribute their position paper to all other parties and all members of the hearing panel within this 5-day period. The position statements will become a permanent part of the grievance record.

2. Days 6-10: All participants review the position statements.

3. Days 11-20: Initial hearing panel held.

4. Time Extension: If the hearing panel is not able to convene to hear the matter within said timeframe, the hearing panel chair shall request an extension of time from the FGRB Chair. See Part 6. F)

5. Panel Member Substitution: In order to expedite the hearing, the FGRB Chair may substitute hearing panel members. If necessary as a matter of last resort, the assistance of the Assistant Vice President of Human Resource Services may be sought.

E. Hearing Procedures:

1. Participation: For hearing panels, each member appointed to serve on the panel shall attend and participate. Also present will be all parties, witnesses, and consultants. A representative designated by HRS-ELR will serve as Notary to swear in witnesses and to record the hearing. Additional representatives from HRS and General Counsel will be available for telephonic consultation as needed.

2. Preservation of Record: An audio recording of the hearing, excluding the panel's deliberations, shall be made and kept. The parties shall be entitled to a copy of the recording, upon written request, after the final written decision has been rendered. Responsibility for transcription, if desired, is on the party desiring the transcription.

3. Disclosure Statement: The hearing panel chair shall ensure that all perceived or actual conflicts of interest have been resolved prior to commencing the hearing by asking for all participants, including the panel members, to indicate that they are not aware of any potential conflicts of interest.

4. Role of Legal Counsel: No person attending the hearing may be represented by legal counsel at the hearing.

5. Closed Hearing: The hearing shall be closed to the public.

6. Time for Presentation at Hearing: The hearing panel chair will assure that all parties have an opportunity to present their cases and may impose reasonable time limits; therefore, the parties should be prepared to make concise statements of their respective positions, refrain from presenting duplicative witness testimony, etc.

7. Conduct of Hearing: The hearing panel chair shall maintain control of the proceeding, including evidentiary and procedural issues. As needed to determine the panel members' collective decision, each panel member may be asked to indicate a position by way of vote. For procedural issues raised by the parties, the chair may ask the parties to step out while the panel deliberates and decides; when the parties return, the chair shall announce the panel's decision on the issue.

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- 8. Witnesses: Each party may call witnesses. Witnesses may only be in the hearing while giving testimony. This does not apply to the parties who may also provide testimony.
- 9. Testimony: Testimony of any party or witness shall be taken under oath. The hearing panel chair may request that all oaths be taken at one time, and then the witnesses asked to leave until such time as they are called to testify, or they may be taken individually immediately prior to giving testimony.
- 10. Oath Administration: A representative from Human Resource Services, Employee and Labor Relations must administer the oath to the parties participating in a hearing regarding their testimonies.
- 11. Deliberations: The hearing panel shall deliberate in closed session, apart from the parties. The panel may elect to consult with representatives from the Office of University General Counsel, the Office of Human Resource Services, or other NMSU offices during the hearing or during its deliberations.
- F. Findings and Recommendations: Within ten (10) days from the closure of the hearing (last date of deliberations by the hearing panel), the hearing panel chair shall submit findings and recommendations representative of the hearing panel's collective decision, which may include any dissenting opinion, to the FGRB Chair. The FGRB Chair shall forward these materials along with the complete Grievance Record to the office of the final decision maker, which is typically the Office of the Executive Vice President and Provost.
- G. Procedures for Final Decision: The Executive Vice President and Provost is authorized to issue a written final decision on grievances heard by the FGRB. If for any reason the Executive Vice President and Provost is recused or excused from making a decision, the Chancellor, or other designee of the Vice President of the Office of Human Resource Services, shall have the authority to issue a written final decision and the FGRB Chair will be notified. The Executive Vice President and Provost or other designated decision maker shall issue the final decision within fifteen (15) days from receipt of the FGRB hearing panel's findings and recommendations, and the complete Grievance Record. The decision, with a copy of the FGRB hearing panel's findings and recommendations attached, shall be delivered to the parties. A copy of the decision shall also be sent to the Office of Human Resource Services for inclusion in the Grievance Record. Notification that a final decision has been issued will be sent to the FGRB Chair.

Rule Administrator:	Executive Vice President and Provost
Scope:	NMSU System
Effective Date:	Upon Approval by Chancellor
Revision History:	10.21.15: BOR approved a replica of Policy 4.05.50 to become the initial Rule 4.05.50; xx.yy.zz FS recommended approval; 11.22.33 UAC recommended approval; aa.bb.cc. Chancellor approved.

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- Deleted: <#>-Preservation of Record: The hearing shall be recorded; the parties shall be entitled to a copy of the recording, upon request, after the final decision has been rendered. Responsibility for transcription is on the party desiring the transcription.¶  
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